

PAGE 1 OF 4  
DATE: 24 MAY 2004

RECEIVED  
MAY 25 2004  
PUBLIC SERVICE  
COMMISSION

COMMONWEALTH OF KENTUCKY  
PUBLIC SERVICE COMMISSION

IN THE MATTER OF :

AN ADJUSTMENT OF THE GAS AND ELECTRIC )  
RATES, TERMS AND CONDITIONS OF ) CASE NO.  
LOUISVILLE GAS AND ELECTRIC COMPANY ) 2003 - 00433

**RECOMMENDATION OF ROBERT L. MADISON CONCERNING RATE  
CASE PARTIAL SETTLEMENT AGREEMENT, STIPULATIONS AND  
RECOMMENDATION AND ESM SETTLEMENT AGREEMENT,  
DATED 12 MAY 2004**

THIS IS THE RECOMMENDATION OF ROBERT L. MADISON CONCERNING  
THE PARTIAL RATE CASE SETTLEMENT (SETTLEMENT) DATED 12 MAY 2004.

**MADISON RECOMMENDATION:** THE PSC NOT APPROVE THE PARTIAL  
SETTLEMENT AGREEMENT. IF LG&E / KU WISH TO IMPLEMENT A HOME  
ENERGY ASSISTANCE (HEA) THE PSC SHOULD OPEN A SEPARATE CASE  
ON THAT ISSUE AND THE CASE SHOULD RUN FOR 6 MONTHS. 30 DAYS  
SHOULD BE ALLOWED FROM THE OPENING OF THE CASE FOR INTERESTED  
PARTIES TO REQUEST INTERVENTION AND THE PSC MAKE THE  
INTERVENTION DECISIONS BEFORE THE CASE BEGINS. NO PRE  
DETERMINED ISSUES SHOULD BE DECIDED BEFORE THE CASE BEGINS.

**REASONS FOR THE RECOMMENDATION :**

1. IN MY REVIEW OF THE SETTLEMENT, THE ENCLOSURES THAT SHOWED  
THE ALLOCATION OF REVENUE TO THE CLASSES OF CUSTOMERS WERE  
NOT INCLUDED. THEREFORE I DO NOT ENDORSE ANY OTHER ASPECT OF  
THE SETTLEMENT SINCE I DO NOT HAVE THAT INFORMATION AVAILABLE.  
TODAY I AM ADDRESSING ONLY THE HEA PORTION OF THE SETTLEMENT.

2. THERE WAS NO PUBLICATION OF THE HEA IN THE NEWSPAPER NOTICE  
FOR THE LG&E RATE CASE. I FEEL THE INCLUSION OF THIS NEW TARIFF /  
FEE WITHOUT PUBLICATION VIOLATES 807 KAR 5:0001, SECTION 4 (2).

3. I OBJECT TO THE PROCEDURE TO IMPLEMENT A HEA THROUGH THE  
SETTLEMENT BECAUSE :

A. IN A LETTER DATED 03 JAN 2004, I REQUESTED FULL INTERVENTION IN  
THIS CASE. IN THAT LETTER I STATED I HAD A SPECIAL INTEREST IN THE  
CASE SINCE THE ATTORNEY GENERAL HAD TAKEN DIFFERENT POSITIONS  
ON ISSUES CONCERNING RESIDENTIAL CUSTOMERS, THAT I HAD BEEN THE  
ONLY INTERVENOR IN A CASE CONCERNING A LG&E HEA THAT HAS BEEN

PAGE 2 OF 4  
DATE: 24 MAY 2004

THE SUBJECT OF A HEARING IN KENTUCKY AND THAT LOW - INCOME ADVOCATES WERE LIKELY TO REQUEST INTERVENTION. LG&E OBJECTED TO MY INTERVENTION, I RESPONDED TO THE LG&E OBJECTION AND THE PSC THEN DENIED MY INTERVENTION REQUEST. I REQUESTED RECONSIDERATION OF THE INTERVENTION DETERMINATION, THE PSC ALSO DENIED THAT. IN THE PSC ORDER DENYING MY INTERVENTION REQUEST DATED 21 JAN 2004, ON PAGE 4 IT STATES :

THE FACT THAT MR. MADISON HAS PREVIOUSLY TAKEN POSITIONS THAT DIFFER FROM THOSE OF THE AG DOES NOT MEAN THAT THE AG IS NOT FAIRLY AND ADEQUATELY REPRESENTING THE INTERESTS OF ALL CONSUMERS.

THE FACT THAT THE AG HAS AGREED TO THE LOW INCOME HEA IS, I BELIEVE, NOT ADEQUATELY AND FAIRLY REPRESENTING THE INTERESTS OF RESIDENTIAL CUSTOMERS.

B. THE OTHER PARTIES WHO SIGNED THE AGREEMENT DO NOT HAVE ANY PAYMENTS OBLIGATIONS TO A HEA. RESIDENTIAL CUSTOMERS PAY THE ENTIRE COSTS, NO COST IS BORN BY COMMERCIAL, INDUSTRIAL, SPECIAL CONTRACT CUSTOMERS (DOD), THE PSC, THE AG, KIUC, NAS, LEXINGTON GOVERNMENT OR THE LOW INCOME ADVOCATES.

C. IT IS NOT FAIR TO EXCLUDE A PARTY THAT HAS DIFFERENT VIEWS ON A HEA AND THEN MAKE A SETTLEMENT WHERE NO TESTIMONY HAS BEEN HELD ON THE VARIOUS ISSUES OF A HEA, NO CHANCE FOR DATA REQUEST, CROSS EXAMINATION OR DEBATE ON THE ISSUES, ETC. THE PROCEDURE HAS BEEN GAMED AND IS NOT REASONABLE. IT DENIES DUE PROCESS.

4. SECTION 3.14 OF THE SETTLEMENT (PAGE 11) HAS DETERMINED THAT THE HEA PLAN WILL BE FOR YEAR - ROUND (NOT WINTER ONLY), IT WILL BE 10 CENTS PER ELECTRIC AND GAS METER PER RESIDENTIAL CUSTOMER PER MONTH , WILL LAST FOR THREE YEARS, THE CRITERIA WILL BE FOR LOW - INCOME INDIVIDUALS TO RECEIVE FUNDS, THE ADMINISTRATORS OF THE FUNDS WILL BE THE LOW INCOME ADVOCATE INTERVENORS AND THE ADMINISTRATORS WILL BE ALLOWED 10% OF THE FUNDS FOR ADMINISTRATION.

THESE ISSUES AND OTHER ISSUES SHOULD HAVE BEEN SUBJECT TO A PSC CASE WHERE INTERVENTION REQUESTS WERE FAIRLY HANDLED, THERE WAS THE OPPORTUNITY FOR DATA REQUESTS, A HEARING, CROSS EXAMINATIONS BRIEFS, ETC. ON THESE ISSUES. PRESUMABLY THE REASON FOR HAVING THE CHARGE ON THE METER IS SO IT WILL NOT SHOW UP AS A LINE ITEM CHARGE, THEREFORE RESIDENTIAL CUSTOMERS WILL NOT EVEN BE AWARE OF THE CHARGE. IN THE PREVIOUS HEA CASE THERE WAS A STRONG NEGATIVE REACTION TO THE HEA WHEN THE RESIDENTIAL CUSTOMERS BECAME AWARE OF THE CHARGE. THE COST ON A METER HAVE ABSOLUTELY NOTHING TO DO WITH DSM. I FEEL THIS METHOD OF FUNDING A HEA VIOLATES KRS 278.285. THERE ARE NUMEROUS OTHER ISSUES NOT ADDRESSED IN THE SETTLEMENT

PAGE 3 OF 4  
DATE: 24 MAY 2004

INCLUDING THE UTILITY MATCH, THE GOVERNING BOARD, THE DEMOGRAPHIC FAIRNESS OF RECIPIENTS, FAIR DISTRIBUTION OF FUNDS IN THE TERRITORY, ETC.

5. SECTION 3.15 OF THE SETTLEMENT HAS AN IMPLEMENTATION DATE FOR THE HEA OF 01 OCT 2004. IF THE PSC MAKES A DECISION BY 01 JUL 2004, THAT ONLY LEAVES THREE MONTHS FOR MAKING THE OTHER DECISIONS ASSUMING THAT A CASE WILL BE OPENED ON THE OTHER ISSUES. THIS IS NOT ADEQUATE TIME. IT IS ALSO NOT FAIR TO HAVE NUMEROUS SIGNIFICANT ISSUES PREDETERMINED AND EXCLUDED FROM A CASE, WERE ONE TO BE OPENED.

6. SECTION 3.17 OF THE SETTLEMENT STATES :

' THE SIGNATORIES HERETO, INCLUDING THE AG, WHO ARE PARTIES TO THE ... FRANKLIN CIRCUIT COURT ACTION HEREBY AGREE THAT UPON APPROVAL OF THIS SETTLEMENT AGREEMENT BY THE COMMISSION, THEY WILL JOINTLY MOVE THE FRANKLIN CIRCUIT COURT FOR THE ENTRY OF AN ORDER DISMISSING THE PENDING HEA ... APPEAL, CIVIL ACTION NO. 02 - CI - 0991 ... '

THE AG IS NOT A PARTY TO THE HEA FRANKLIN CIRCUIT COURT CASE. MHNA FILED THE CASE. MYSELF, LG&E, THE PSC, THE JEFFERSON COUNTY DEPARTMENT FOR HUMAN SERVICES AND KACA ARE DEFENDANTS. THE CURRENT SITUATION RAISES A ETHICAL DILEMMA. SHOULD THE PSC APPROVE THE SETTLEMENT, CONSIDERING :

1. THE SETTLEMENT WILL TAKE 1.32 MILLION DOLLARS PER YEAR FROM RESIDENTIAL CUSTOMERS PER YEAR.
2. THE SETTLEMENT WILL RESOLVE A COURT CASE WHERE TWO OF THE SETTLEMENT SIGNATORIES ARE DEFENDANTS (LG&E & KACA).
3. THE PSC IS A DEFENDANT IN THE COURT CASE AND THE APPROVER OF THE SETTLEMENT.
4. THE ONLY RESIDENTIAL INTERVENOR AND DEFENDANT IN THE PREVIOUS HEA CASE AND COURT CASE (MYSELF) WAS DENIED PARTICIPATION IN THE CURRENT PSC CASE.
5. THE RESIDENTIAL CUSTOMERS WILL PAY ALL THE SETTLEMENT COSTS.

PAGE 4 OF 4  
DATE: 24 MAY 2004

I CERTIFY THAT ON 24 MAY 2004, COPIES OF THIS RECOMMENDATION OF ROBERT L. MADISON WERE MAILED TO ALL PARTIES OF RECORD IN PSC CASE 2003 - 00433.

SINCERELY,

*Robert L. Madison*

ROBERT L. MADISON  
5407 BAYWOOD DRIVE  
LOUISVILLE KY 40241-1318  
HOME PHONE: (502) 241-5079